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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte OLEG B. RASHKOVSKIY

Appeal 2008-4736
Application 09/690,159
Technology Center 2400

Decided:[1] April 30, 2009

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI, and MARC S. HOFF, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the rejection of claims 44 through 51, 54, 55, 56, and 58 through 74.

We affirm.

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

INVENTION

The invention is directed toward a system and method of inserting advertising into a video content. See page 3 of Appellant's Specification. Claim 44 is reproduced below:

> 44. A method comprising:
> receiving content and at least two advertisements on a content receiver;
> storing the content and advertisements in a cache coupled to said content receiver;
> selecting a stored advertisement based on a content characteristic that is specified by an advertisement provider;
> displaying content retrieved from said cache in one mode of display; and
> in response to detecting a change from the one mode of display to another mode of display, displaying one or more selected advertisements for as long as the other mode of display continues, said change from said one mode of display to said other mode of display in response to an action taken by a user of said content receiver.

REFERENCES

Zigmond	US 6,698,020 B1	Feb. 24, 2004 (Jun. 15, 1998)
Armstrong	US 7,017,173 B1	Mar. 21, 2006 (filed Mar. 30, 2000)

REJECTIONS AT ISSUE

The Examiner has rejected claims 44 through 51, 54, 55, 56, and 58 through 74 under 35 U.S.C. § 103(a) as being unpatentable over Armstrong

and Zigmond. The Examiner's rejection is on pages 3 through 7 of the Answer.[2]

ISSUE

Appellant argues on pages 10 and 11 of the Brief[3] that the Examiner's rejection of claims 44 through 51, 54, 55, 56, and 58 through 74 under 35 U.S.C. § 103(a) is in error. Appellant argues that Zigmond does not teach a cache that contains video programming content and advertising. Rather Appellant argues that the cache taught by Zigmond contains only advertisements. Brief 10.

Thus, Appellant's contentions present us with the issue:

Has Appellant shown that the Examiner erred in finding that the combination of Armstrong and Zigmond teaches storing the content and advertisements in a cache coupled to said content receiver as claimed.

PRINCIPLES OF LAW

On the issue of obviousness, the Supreme Court has stated that "the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there

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[2] Throughout the opinion we refer to the Answer mailed December 12, 2007.
[3] Throughout the opinion we refer to the Brief filed September 20, 2007 and the Reply Brief filed January 28, 2008.

was an obvious solution encompassed by the patent's claims." *Id.* at 419-420.

FINDINGS OF FACT

Armstrong

1. Armstrong teaches a method of inserting advertisement or other information into an audio-video presentation. Abstract.
2. Armstrong's system makes use of a presentation device (i.e. a display such as a television), a set top box, and a user input device (i.e. a remote control). Col. 3, l. 56, col. 4, l. 2.
3. The set top box forwards user commands (entered by the input device for functions such as fast forward, pause, and rewind) to a head end controller. The head end controller contains a video server which stores video content. Col. 3, ll. 19-55, 61-63, and col. 4, ll. 9-10.
4. The video server comprises a mass storage device, which stores content streams (compressed video and audio), and also stores other content such as advertisements. Col. 4, ll. 9-17.

Zigmond

5. Zigmond teaches a system for selecting and inserting advertisements into a video programming feed at the household level. Abstract.
6. Zigmond teaches that there is an advertisement insertion device (item 60 in Figure 3) at the user's location. Col. 7, ll. 37-40.
7. The details of the advertisement device are shown in another embodiment depicted in Figure 5 (which refers to the advertisement insertion device as item 80). Col. 10, ll. 16-20.

8. The advertisement insertion device may receive the advertisements from a variety of sources such as over the air broadcasts, cable, satellite, or Internet and they are stored in an advertisement repository. Col. 15, ll. 1-23, col. 18, 7-13.
9. The advertisement repository is described as being a computer readable medium which stores digitally encoded video programming for later display. Col. 15, ll. 28-34.
10. The system is also described as having applications for inserting other types of video (i.e. not just advertisements) into other video objects. As another example, it is identified that the advertisement source (which provides information to the advertisement repository) may contain pay-per-view or other types of broadcasts. Col. 18, ll. 29-37.

ANALYSIS

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 44[4]. Claim 44 recites a method of receiving content and at least two advertisements on a receiver and "storing the content and advertisements in a cache coupled to said content receiver." Appellant's arguments, on pages 10 and 11 of the Brief and pages 1 and 2 of the Reply Brief, focus on the teachings of Zigmond's advertisement repository (item 86) and assert that there is no teaching that the repository contains both content and advertisements. The Examiner's response, on

[4] Appellant's arguments group claims 44 through 51, 54, 55, 56, and 58 through 74 together. Accordingly, we select claim 44 as representative of the group.

pages 8 and 9 of the Answer, is directed to teachings in column 15 to support a finding that Zigmond teaches that video programming in the repository.[5] While we are not in agreement that the description in Zigmond's column 15 definitively teaches that content and advertisements are stored in the advertisement repository, such *is* suggested by the discussion in column 18 relating to storing pay-per-view content. See Facts 9 and 10. We nonetheless find that Armstrong definitively teaches that the advertisements and content are stored in the same location. Fact 4. We consider the Examiner's conclusion that a skilled artisan would have found it obvious to combine the teachings of Armstrong and Zigmond to be proper, as it is uncontested. Thus, while we do not consider the evidence in Zigmond alone to support the Examiner's finding that storing advertisement and content in the same cache was known in the art, we find that the combination of Armstrong and Zigmond provides sufficient evidence to support this finding by the Examiner. Accordingly, Appellant's arguments have not persuaded us that the Examiner erred in finding that the combination of Armstrong in view of Zigmond teaches storing content and advertisements in a cache coupled to said content receiver, as claimed.

[5] We recognize and concur with the Examiner's statement on page 9 of the Answer, that the advertisements and content are both video data. As such we concur with the Examiner that the cache in Zigmond teaches storing video data. However, within the scope of claim 44, content is displayed in a different manner than advertisements, and we can not readily ascertain that both types of video data are stored in the advertisement repository.

CONCLUSION

Appellant has not persuaded us of error in the Examiner's rejections of claims 44 through 51, 54, 55, 56, and 58 through 74 under 35 U.S.C. § 103(a).

ORDER

The decision of the Examiner to reject claims 44 through 51, 54, 55, 56, and 58 through 74 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

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